

U.S. Senator Charles E. Schumer (D-NY), Chairman of the Senate Rules Committee, delivered the following remarks Thursday to open the panel's first hearing on whether the Senate's filibuster rules should be reformed.

Statement of Chairman Charles E. Schumer
Senate Rules Committee
Hearing on "Examining the History of the Senate Filibuster 1789-2008"
April 22, 2010

The Rules Committee shall come to order. Good Morning. I would like to thank my friend, Ranking Member Bennett, and my other colleagues present for participating in this hearing. I especially want to thank our Rules Committee colleague, Senator Byrd, who could not be here today, for his interest in our hearing and for the statement he is submitting for the record.

This is the first in a series of hearings by the Rules Committee to examine the filibuster, a topic that we hear a lot about from our constituents, from our colleagues, and in the press. That's because filibusters and cloture motions have escalated in recent years to unprecedented levels.

In the first half of the 20th century, filibusters and filibuster threats were relatively rare events. From the 1920s through the 1950s, an average of about ten cloture motions were filed *per decade*. That number almost tripled to 28 during the 1960s, the era of controversial civil rights legislation. But after that things really started to take off – a total of 358 cloture motions were filed in the 1990s, and from 2001 through 2009, there were 435 cloture motions filed.

Clearly, the filibuster has changed over the years. Not only is it used a lot more now, but the threat of filibusters has become an almost-daily fact of life in the Senate, influencing how we handle virtually everything debated on the Senate floor.

The filibuster used to be the exception to the rule. In today's Senate, it's becoming a straitjacket.

So, especially during the last decade, there's been a lot of interest, and concern, and frustration from both parties about where we are headed in terms of getting things done in the Senate. There are many people saying we need to change the rules to make it easier to get cloture or to handle Senate business more efficiently. Four such resolutions have been introduced in this Congress, including one by our Rules Committee colleague, Senator Tom Udall, which we will hear about at a future hearing. Others say we shouldn't change the rules.

As Chairman of the Rules Committee, I intend to take a thoughtful, thorough approach to this topic. Since I joined the Senate in 1999, I have seen the use of the filibuster continue to increase under both Republican and Democratic majorities, so it's not just one party doing it. And in 2005, we had a near-crisis over the so-called "nuclear" or "constitutional" option – a crisis that ended when a bipartisan group of Senators came together to find a middle ground.

The truth is, both parties have had a love-hate relationship with the filibuster depending on if you are in the majority or the minority at the time. But this is not healthy for the Senate as an institution.

The last Rules Committee Hearing on the filibuster was on June 5, 2003, under then-Chairman Trent Lott. The topic was a proposal by Majority Leader Frist to change the Standing Rules of the Senate to allow a simple majority of 51 votes to end debate on judicial nominees.

In reflecting on the substance of that hearing, it is clear that our statements about whether or not to change the cloture rule usually coincided with whether we were in the Majority or the Minority. I was a member of this committee in 2003, as were many of my colleagues here, both Republican and Democrat. Not surprisingly, the words we spoke then might not reflect how we feel today, when our Majority and Minority roles are reversed. I am sure my colleagues could quote me opposing filibuster reform, just as I could quote them in favor of such reform. But that is not the point of these hearings.

The fact is that all of us, on both sides of the aisle, struggle with the same questions. What does the Constitution say about ending debate, or allowing unlimited debate, in the Senate? What does it say about how Senate rules can be changed? What are the rights of the Minority? What are the rights of the Majority? When does respect for the rights of other Members of this body become a disregard for the needs of the majority of Americans to have us act?

We all know that those of us in the Minority in one Congress will be in the Majority in another, and vice versa. What we seek is a path toward civility, deliberation, and consensus that eventually, at the proper time, leads to the best decisions we can make collectively for our country.

Only by carefully exploring these issues can we answer the question: Should we change the Senate rules? And if so, how and when?

Knowing the history of debate in the Senate and the efforts to limit it is the first step. So we are starting our series of hearings today with an examination of the history of the filibuster from 1789 to 2008.

We will start at the beginning. What does the Constitution say about the Senate? Since there was no procedural rule to cut off debate for most of the 19th century –how did that affect decision making in the Senate? What eventually prompted adoption of the cloture rule in 1917 that for the first time in Senate history allowed Senators, by a 2/3 supermajority, to vote to end debate?

Our witnesses will describe how the cloture rule and the filibuster were used during the 20th century, in the debates on civil rights, and the push for filibuster reform in the 1970s that lowered the threshold for cloture to 60 votes.

Finally, we will hear about the modern era of the Senate, including the impact of filibusters and cloture motions in every decade since the 1970s, as the use of the filibuster escalated drastically. Our historical overview will end in 2008, before the start of the current Congress.

Today's hearing will establish a common understanding for our future hearings and discussions. I hope that it informs Members of this Committee, the Senate, and the public at large about the development of the filibuster and efforts of the Senate over more than two centuries to manage it and deal with its consequences.

In our next hearing, we will look at the filibuster in the this Congress, examining issues such as whether it is more difficult for the Senate to complete its regular business now than in previous eras and the impact of the filibuster on other branches of government. In subsequent hearings, we will hear about proposals for changes in Senate rules related to the filibuster and consider what kinds of changes, if any, are needed.

I hope all of us on this Committee will come to these hearings with an open mind, willing to consider the ideas and suggestions presented to us.

I look forward to listening to our witnesses who have come to share their knowledge and experience with us. And now I'll turn to Ranking Member Bennett for his opening statement.